

BEFORE THE FAIR WORK COMMISSION

MATTER NO: AM2016/6

4 YEARLY REVIEW OF MODERN AWARDS –

REAL ESTATE INDUSTRY AWARD 2010

SUBMISSIONS ON BEHALF OF THE REAL ESTATE EMPLOYERS' FEDERATION
AND QUEENSLAND REAL ESTATE INDUSTRIAL ORGANISATION OF
EMPLOYERS

1. The Real Estate Employers' Federation (REEF) and the Queensland Real Estate Industrial Organisation of Employers (QREIOE) make this submission with respect to the 4-year review of the *Real Estate Industry Award 2010*.
2. REEF and QREIOE are registered as organisations of employers under the provisions of the *Fair Work (Registered Organisations) Act 2009*. REEF's eligibility rules enable it to enrol as members, real estate employers in the states of New South Wales, Victoria and Tasmania as well as in the Australian Capital Territory. QREIOE's eligibility rules enable it to enrol as members, real estate employers in the state of Queensland.
3. Following a directions hearing of this matter before his Honour Hatcher VP on 20th May, 2016, his Honour, on 30th May, 2016, issued directions which included the direction that the REEF file a document identifying the variations proposed by the parties, and in particular identifying the issues remaining in dispute, which are now the subject of determination by the Fair Work Commission. An Exposure Draft for the *Real Estate Industry Award 2015*, was filed by REEF on 24th June, 2016 and within that draft Award were identified three principal issues in contest between the parties:

Issue 1 – Work Value Claim

4. The Registered Real Estate Salesperson's Association (South Australia) (RRESA), pursues a claim filed on 23rd January, 2015 to vary the *Real Estate Industry Award 2010* (the "Award"). The claim is Attachment 1 to the Exposure Draft Award filed, and seeks substantial increases to the weekly rates of pay across all classifications currently found in the Award. The claim is put as a Work Value Claim.

Issue 2- An Application by the Australia Property Services Association (APSA) for an underpinning wage guarantee for commission-only property sales employees

5. The APSA seeks a wage safety net, calculated 6 monthly, to guarantee in any 6 month period, a property sales employee will be paid by way of commission-only no less than the equivalent Award wage that would otherwise be payable for the same period of employment.¹

Issue 3 – An Application by RRESA to restrict the way an employer and its employee may agree to the content of commission, bonus or other incentive payments.

6. The RRESA application seeks to prohibit an employer and its employee from agreeing to debit various amounts such as unpaid vendor authorised advertising, against the over Award payment provisions contained in the employee's contract of employment.

¹ At page 17 of Exposure Draft Award

Issue 1

7. The Application by RRESA seeks substantial increases to all classifications in the Modern Award. Those classifications include not only Property Sales employees but also employees in Property Management and Strata/Community Title Management.
8. RRESA is registered as an industrial association of employees in South Australia and has provisional registration under the *Fair Work Act, 2009*. Annexed and marked "A" to these submissions are the registered rules of RRESA. It is apparent from those Rules that the Association is capable, and only capable, of enrolling as members persons in accordance with the following rule:

"2. *CONSTITUTION*

The Association shall consist of employees licensed under the Land Agents, Brokers and Valuers Act, 1973 or any Act amending such Acts or substituted therefore and who are admitted to membership of the Association and who are employed or are to be employed as:

- a. Salespersons in connection with the sale of land, home units, buildings and/or business of any kind.*
 - b. Salespersons by Auctioneers, stock and station agents.*
 - c. Registered as Managers, licensed under the said Land Agents, Brokers and Valuers Act."*
9. Pursuant to s.158(1) of the *Fair Work Act, 2009* (the Act) an organisation entitled to represent the industrial interests of employees covered by a Modern Award may make application to vary or include terms in that Modern Award.
 10. Pursuant to its constitution, RRESA is only entitled to admit as members employees who are either employed as salespersons or registered as managers of the employing entity under South Australia legislation. RRESA is not entitled under its constitution rule to enrol as members persons who are

employed in property management or strata/community title classifications, at any level.

11. As RRESA is not entitled to enrol as members Property Managers or Strata/Community Title Managers it is not entitled to bring that part of the application for wage increases to those persons under the Modern Award.
12. As a consequence, the Fair Work Commission ought to dismiss that part of the RRESA application which refers to classifications in Property Management or Strata/Community Title Management, pursuant to 587(1)(a) of the Act as being an application not made in accordance with the Act.
13. As to the whole of the RRESA application pertaining to wage increases, it is to be noted that pursuant to s.156(3) and (4) of the Act, the Fair Work Commission may make a determination varying Modern Award minimum wages but only if the Commission is satisfied that the variation of the Modern Award minimum wages is justified on work value grounds.
14. In *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues*², (the preliminary jurisdictional issues decision) a Full Bench of the Fair Work Commission held:

“23. The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI’s submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative

² (2014) 241 IR 189

provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.

24. *In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Pt 10A of the Workplace Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see item 4 of Sch 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Pt 10A process is, in a number of important respects, identical or similar to the modern awards objective in s134 of FW Act. In the Review the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made. (emphasis added).*
15. RRESA has filed statements in support of its application, including those of Mr. Clarke, Ms. Masson-Forbes and Mr Fox. Ms. Masson-Forbes and Mr. Fox speak of their experience in working in the real estate industry in South Australia.
16. With respect to the South Australian real estate industry, it represents a very small proportion of the industry nationwide. Indeed, by reference to annexure C to the Statement of Mr Clarke, it would appear from a report identifying the number of real estate agents in Australia in October 2012, that the South Australian industry represented only 5% of the total real estate agents throughout Australia and from the figures provided by Mr Clarke it can also be seen that the combined New South Wales and Queensland real estate businesses represent 64% of the industry nationwide.

17. Not only does RRESA represent a very small proportion of the industry Australia wide, the material it relies upon to substantiate its case for work value increases, across all classifications, falls well short of what could be described as “*probative evidence properly directed to demonstrating the facts supporting the proposed variations.*”³ The Modern Award was made by the predecessor of the Fair Work Commission, the Australian Industrial Relations Commission,⁴ and that Commission in its statement of 25th September, 2009 acknowledged that the new draft Award filed by Real Estate parties reflected a consent position of both employer and employee associations then representing a significant part of the real estate industry.⁵
18. S.284 of the Act provides the statutory “minimum wages objective” and is in the following terms:

“284 What is the minimum wages objective?”

- (1) *The FWC must establish and maintain a safety net of fair minimum wages, taking into account:*
- (a) *The performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and.*
 - (b) *Promotion social inclusion through increased workforce participation; and*
 - (c) *Relative living standards and the needs of the low paid; and*
 - (d) *The principle of equal remuneration for work of equal or comparable value; and*
 - (e) *Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.”*

³ *Ibid* at [23]

⁴ [2009] AIRCFD 865

⁵ *Ibid* at [169]

19. S.138 of the Act provides:

“138. A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.”

20. S.134 of the Act provides the Modern Awards objective and includes, inter alia, that the Commission must ensure that Modern Awards *“provide a fair and relevant minimum safety net of terms and conditions.”*

21. The Real Estate Industry Award 2010 was made by consent of the parties represented at the Commission with no objecting parties advising the Commission of its objection. This Commission can be satisfied that the Award then made was not only made by consent, but it is implicit that at that time the Award then being made was consistent with the Modern Awards objective.⁶ Furthermore, this Commission should not be satisfied that there is any warrant for an increase in wage rates under the Award on a work value grounds when it is faced with the evidence from the Applicant of 3 persons, solely speaking as to South Australia, and whose evidence falls far short of being probative evidence necessary to establish any significant change in the work value of employees covered by the Award.

22. Furthermore, it can be seen that when the important issue of formal qualification is considered, a real estate “salesperson” is only required to have a bare minimum of qualification to commence employment in that role, notably in the states of Victoria where just 3 units of competence towards a Certificate IV are required and in New South Wales where 4 units of competence towards Certificate IV qualification are required.⁷ These two states represent well over 50% of the real estate industry⁸. Further evidence in relation to entry level training requirements in the real estate industry is detailed in the witness statement of Ms. Danielle Andrews which is lodged with this submission and marked “B”.

⁶ Preliminary Jurisdictional Issues Decision at [24]

⁷ Statement of Danielle Andrews

⁸ Annexure C to Statement of Mr Clarke

23. Currently, the relativity of the Property Sales Representative rate to the C10 rate in the Manufacturing Award is between the C12 (87.4%) and C11 (92.4%) rates.
24. On the sparse evidence before the Fair Work Commission, no increase is warranted either on work value grounds or to align with standardised rates and aligning qualifications in the Manufacturing Award.

Issue 2:

25. The Application before the Commission by APSA is to have those employees covered by the Award, who are remunerated solely on a commission-only basis, to have that commission-only arrangement underpinned with a wage safety net. That proposed safety net is to be calculated on the basis of a guarantee that in any 6 month period the employee concerned would earn at least the equivalent of the Award wage for that period. If granted, the effect of the variation could mean that an employee may earn commissions from sales in one 6 month period substantially in excess of wages prescribed by the Award yet in the ensuing 6 months earn commissions less than what would otherwise be payable to an employee only earning Award rates. This could easily and conceivably lead to an employee in any 12 month period being entitled not only to substantial commission payments but also additional payments in accordance with the Award minimum rates of pay.
26. The current Award provides for an employee to prove capable of earning a minimum income threshold before that employee can be paid on a commission only basis. This is a minimum income threshold which has stood the test of time and is well understood within the real estate industry. In other words, a person must first prove that they can achieve income based on commission only in any single 12 month period in the 5 years immediately prior to entering into the commission only arrangement before they are permitted to be paid in accordance with such a scheme.

27. REEF, together with QREIOE, have reached an agreement with RRESA to increase the minimum threshold amount in the Award to a total gross income calculated at 160% of the annualised minimum Award wage for an adult Property Sales Representative. Furthermore, this agreement has compressed the qualifying period to a period of any consecutive 12 months in the 3 years immediately preceding entering into the commission only payment system.
28. The agreement between REEF, QREIOE and RRESA, represents a practical, and workable system which will adequately safeguard an employee entering into a commission-only arrangement with his or her employer.
29. Commission-only arrangements in the real estate industry have a long history in New South Wales. The Real Estate Industry (State) Award 1987 was made by Macken J. in the Industrial Commission of NSW, operative from the 1st February, 1987. This Award was the first time that real estate salespeople could be engaged on a commission only basis in New South Wales. The Award was made by consent of the employer groups and the Real Estate Association (the employee's union).⁹ The provision relating to commission-only payments appeared in all subsequent New South Wales Awards and was largely unaltered except for minor amendments.
30. The introduction of the then Federal government's WorkChoices legislation brought about significant change in relation to commission-only employment. Minimum wages for employees covered by the Federal system were no longer included in Awards but rather in Pay Scales that formed part of the Australia Fair Pay and Conditions Standard. Ultimately, a joint submission by both employer stakeholders and unions was filed with the Australia Fair Pay Commission in May, 2007, which joint submission supported a new commission-only Pay Scale. A new Pay Scale was ultimately handed down by the AFPC which reflected the agreement between the parties. The commission-only provisions in the current Modern Award represent an agreed position between the unions and employers and are largely a reflection of the Pay Scale initially adopted by the Australia Fair Pay Commission in 2007.

⁹ Real Estate Industry (State) Award 1987 (Nos. 347 & 365 of 1986) NSW IG Vol. 244 (18 Feb 1987)

Notably, at the establishment of the current Modern Award, there was total union support to have commission- only arrangements included in the Real Estate Modern Award, without any underpinning wage guarantee.

31. The Fair Work Commission ought to reject the application by APSA to have an underpinned wage safety net for employees paid on a commission-only basis. The scant evidence now relied upon by APSA in support of its application is inconclusive and when examined by this Commission at hearing, will not support the changes now sought by APSA.
32. Furthermore and as previously noted, APSA's claim could have the practical effect of providing commission-only employees with the opportunity to "double dip". That is to say, a commission-only employee could obtain the advantage of earning significant commission payments in one period (which are well in excess of the minimum award and statutory entitlements) without the employer being able to offset the 'excess' commission payments against a top-up payment applied during a previous period.

Issue 3:

33. Clause 15 of the current Modern Award recognises the position that employers and their employees may agree to a method of payment of sales commissions in addition to the minimum weekly wage prescribed by the Award. Clause 17 of the Award prescribes that such agreements must be evidenced in writing.
34. By their very nature, such commission or bonus payments, being in addition to the minimum weekly wage prescribed by the Award, are in fact over award payments. The current Modern Award makes no prescription, nor could it, for the quantum which the employee will receive as such over award payment, nor indeed on how it is to be calculated.
35. RRESA seeks by Application that the Fair Work Commission prescribe in the Award certain amounts, such as unpaid vendor authorised advertising, are

prohibited from being taken into account when calculating commission or other incentive payments made in excess of the Award minimum rate¹⁰.

36. Clause 9.1 of the Exposure Draft Award repeats the Modern Award provision recognising that an employer and that employer's employee may agree to the payment of commission, in addition to the minimum weekly wage and that agreement will be evidenced in writing between the parties to the Agreement. One thing is clear, any payment in addition to the minimum weekly wage would be in addition to the Award entitlement and as such it would be an over award payment.
37. A Full Bench of the Fair Work Commission gave consideration to the circumstances of over award payments in *Re 4 Yearly Review of Modern Awards [2015] FWCFB 6656*. Whilst it is clear that this decision was giving consideration to the retention or otherwise of an absorption clause, the Commission made the following observations:

"As we have mentioned, the Modern Awards objective is to ensure that Modern Awards, together with the NES, provide:

'A fair and relevant minimum safety net of terms and conditions'.

The safety net nature of Modern Awards was emphasised in the July 2015 decision, as follows:

'Modern Awards provide a safety net of minimum entitlements. The Modern Award prescribes the minimum rate an employer must pay an employee in given circumstances. Over award payments, while permissible, are not mandatory.'

(Re 4 Yearly Review of Modern Awards (2015) 250 IR 387 at [96])

...

Modern Awards are part of the minimum safety net of terms and conditions established by the FW Act. It is not the function of such a minimum safety net to regulate the interaction between minimum

¹⁰ See nature of RRESA Application, in red at Clause 9.2 of the Exposure Draft Award.

*Award entitlements and over award payments. Such matters are adequately dealt with by the Common Law principles of set off to which we have referred and should be left to individual employers and employees to determine. ...*¹¹

38. Whilst it is clear that the Fair Work Commission in the above cited case was not dealing with an Application to fetter the parties ability to freely negotiate an over award payment, rather whether a particular absorption clause should be placed in a Modern Award, the Commission's observations remain relevant to the RRESA application.
39. With respect to the real estate industry, and the Modern Award regulating employment terms and conditions within that Industry, the Commission should not attempt in any way to regulate the nature of over award payments which may be made to real estate salespersons. The Fair Work Commission is empowered to set a relevant minimum safety net wage rate. It is with respect, not empowered to prescribe in any way the content of an over award payment which may be negotiated between an employer and its employee. This does not say that the Commission should not in an Award prescribe that over award payments should be evidenced in writing, but it should not prescribe the content of such over award payments.

Conclusion:

40. REEF and QREIOE, in addition to the above submissions, rely upon submissions previously filed on 24th June 2016 and 27th July 2016.

R.S. WARREN

Frederick Jordan Chambers

On behalf of Real Estate Employers Federation and Queensland Real Estate Industrial Organisation of Employers.

¹¹ [2015] FWCFB 6656 at [72] and [74]

"A"

REGISTERED REAL ESTATE SALESPERSONS' ASSOCIATION OF SOUTH AUSTRALIA

RULES

JANUARY 1989

1. NAME

The name of the Association shall be the Registered Real Estate Salespersons' Association of South Australia.

2. CONSTITUTION

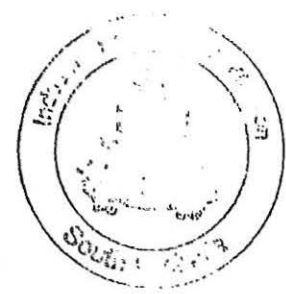
The Association shall consist of employees licensed under the Land Agents, Brokers and Valuers Act 1973 or any Act amending such Acts or substituted therefore and who are admitted to membership of the Association and who are employed or are to be employed as:

- a. salespersons in connection with the sale of land, home units, buildings and/or business of any kind.
- b. salespersons by Auctioneers, Stock and Station Agents.
- c. registered as Managers licensed under the said Land Agents, Brokers and Valuers Act

3. OBJECTS

The objects of the Association shall be to endeavour by all lawful means:

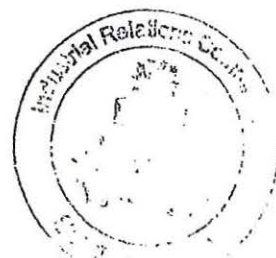
- a. to promote the interest of all members in matters relating to their employment as Salespersons and to afford opportunity to discuss such matters.
- b. to provide means for combined action in relation to such matters
- c. to conduct negotiations with associations and employers or groups of employers and to make application to tribunals for awards and effect industrial agreements for rates of pay and working conditions for members.
- d. to co-operate with, or with the approval of the Association, amalgamate or affiliate with other associations or unions, having similar objects to the objects of this Association
- e. to secure redress for any grievance to which members may become subject
- f. to enquire into and secure fair and reasonable adjustment on behalf of members in cases of any charge, reduction in status, grade or pay, dismissal or retirement
- g. to promote industrial peace and efficiency
- h. to publish a non political journal
- i. to secure preference to members of the Association
- j. to provide for the acquisition of property, including the purchase or erection of a building, for office or other accommodation



*Consolidated Rules
Registered 24.4.89*

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- k. to enter into agreement respecting rates of pay and conditions of employment with any authority on behalf of the Government or any other authority or body
- l. to do generally all things which are desirable or essential in matters affecting the employment and educational welfare of members
- m. to engage managers, officers and employees for the furtherance of the Association's objects and remunerate such managers, officers and employees by salaries, wages or other emoluments including contributions to insurance schemes for the benefit of such managers, officers and employees
- n. to make rules and regulations for the conduct of the insurance schemes mentioned in the last preceding object.
- o. if desirable, to provide for and conduct a mortality fund for the benefit of members
- p. to aid and join with any other association or federation of associations, having included in their objects the promotion of the industrial interests of employees for the purpose of furthering such intertests
- q. to endow and maintain a scholarship or scholarships upon such terms and conditions the Committee may from time to time think proper.
- r. the Association shall be non-sectarian and non-political and no subscription shall be made to any political, sectarian group or party
- s. to affiliate with any non-sectarian or non-political Council or Association or other similar body established for the promotion of the industrial interest of employees
- t. to make financial provision for the carrying out of any of the foregoing objects and to do all such other things as are incidental or conducive to the attainment of the above objects



4. REGISTERED OFFICE

The place of meeting and registered office of the Association shall be C/- Stanley and Partners, 16 Halifax Street Adelaide, S.A. 5000, or at such other place as the Committee may decide. Notice of any change of address shall be given to the Industrial Registrar. The registered office shall be open to members and the public between the hours of 9:00am and 5:00pm Monday to Friday in each week except that it shall not be open on Public Holidays or the period between the 24th day of December and the 3rd day of January in each year. The registered office or other places as the Committee may from time to time determine, shall be the place of meeting of the Association. All correspondence to be directed to the Secretary, Registered Real Estate Salespersons' Association of S.A. Post Office Box 494 GPO, Adelaide S.A. 5001.

5. APPOINTMENT TO MEMBERSHIP

Other than a foundation member of the Association, an applicant for appointment to membership of the Association shall sign the application form provided by the Association. Such application shall be dealt with at the next meeting of the Committee of Management and admission to membership shall be by a majority of the votes of the members present at such meeting.

5(a). TERMINATION OF MEMBERSHIP

In the event of a member ceasing to be an "employee", as defined in section 6 of the subsection (1) or section 114 of the Industrial Conciliation and Arbitration Act 1972 or a person eligible for membership, his membership shall thereupon terminate.

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5(b). HONORARY MEMBERS

Honorary Membership may be conferred on a member of the Association by a vote of the members at a General, Annual General, or Special General Meeting. Where Honorary Membership is conferred on a foundation member he will be known as a foundation member.

6. MEMBERSHIP REGISTER

A register of the names and addresses of all members of the Association shall be kept at the Registered Office and a member changing his address at any time shall immediately notify the Secretary of his new address.

7. SUBSCRIPTIONS

With the exception of Honorary Members, subscriptions shall be payable by every member of the Association on the first day of January in each year. The amount of the annual subscription shall be determined by the Committee of Management, but shall not exceed \$50.00.

8. MEMBERS IN ARREARS

Any member who owes moneys in subscriptions, levies or fines over a period of three months shall be deemed unfinancial and shall be excluded from all privileges of membership, but if a member is out of work and has so notified the Secretary, the Committee of Management may suspend the payment of his subscription in such manner as the Committee thinks desirable.

9. RESIGNATION

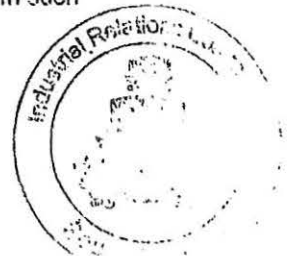
Any member may resign from the Association by giving at least one month's notice in writing to the Secretary of his intention so to do and paying all subscriptions, levies or fines owing by him to the Association up to the date of expiration of such notice.

10. APPLICATION OF FUNDS

The funds of the Association shall be expended only in carrying out the objects as set out in rule (3) and any necessary expenses of management funds for ordinary purposes may be distributed on the authority of the Committee of Management. Funds for extra ordinary purposes may be disbursed on the authority of a general meeting of the Association.

11. INVESTMENT OF FUNDS

The surplus funds of the Association shall be vested in the trustees who shall invest such funds in Commonwealth Loans, Trading Bank or Savings Bank debentures or mortgages or in such manner as they may be directed by the Committee.



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12. MANAGEMENT

The governing body of the Association shall be a Committee of Management (hereinafter called "the Committee") consisting of a President, two Vice Presidents, Secretary, Treasurer and six elected members. The Committee shall have the general management and control of the affairs of the Association, may expend the funds of the Association and do all things necessary, in accordance with these rules, to protect and promote the interests of the Association. The Committee shall meet at least quarterly. Six members shall form a quorum.

The Committee may delegate to an Executive body, such of its powers as from time to time become expedient and in particular to deal with any urgent and emergency matters that may arise between meetings of the Committee. The Executive shall consist of the President, two Vice Presidents, Secretary and Treasurer.

13. ELECTION OF COMMITTEE OF MANAGEMENT

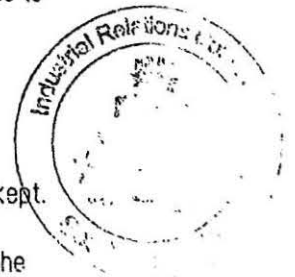
The Committee of Management shall be elected at the annual meeting to be held in the month of February each year in the manner herein provided. A returning Officer shall be appointed at the meeting. All nominations for positions on the Committee shall be in writing signed by two financial members. Voting shall be by a show of hands unless seven financial members demand a ballot. If there is more than one candidate for any position the candidate who polls the highest number of votes shall be elected and shall hold office until his successor is elected. If in any case the number of candidates does not exceed the number of vacancies to be filled, no vote shall be taken and the candidate or candidates, as the case may be, shall be declared elected unopposed and shall hold office until their successors are elected. Vacancies occurring on the Committee prior to annual elections may be filled by the Committee by a special General Meeting to be convened as per clause 18. The first Committee may be elected at a Special General Meeting called for this purpose.

14. TRUSTEES

Two Trustees, who shall be members of the Association, shall be appointed by the Association and they shall hold office during the pleasure of the Association. The Trustees shall have control of all property of the Association and the Secretary and Treasurer shall grant to them access to the books and documents of the Association at any time they require.

15. AUDITOR

A qualified auditor, who is a registered Company Auditor, shall be appointed at the Annual General Meeting each year. He shall audit the books yearly and see that they are properly kept. He shall have the power to call for all books, vouchers and documents belonging to the Association and make a report each year and sign a financial statement for presentation to the annual meeting.



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16. FUNDS

No part of the Association funds shall be distributed directly or indirectly whether in money, property or otherwise, to members of the Association. The funds of the Association shall be banked in such Trading or Savings Bank as may be directed by the Committee. All payments shall be made by cheque signed and countersigned by any 2 of the Secretary, Treasurer or President. No payment shall be made until authorised by the Committee.

17. REMOVAL OF OFFICERS AND MEMBERS OF THE COMMITTEE

The Officers and members of the Committee, Trustees and Auditors may be removed from office by a resolution of a Special General Meeting called for the purpose. Any Officer or member of the Committee who absents himself for three consecutive meetings shall forfeit his position unless a reason satisfactory to the Committee be furnished as to the cause of his absence.

18. MEETINGS

A General Meeting of members shall be held in the month of February each year and this shall be the Annual General Meeting.

Special General Meetings may be called by the Committee at any time. A Special General Meeting shall also be called on requisition signed by at least seven financial members. The requisition shall state the business of the Special General Meeting and such meeting shall be held within one month of the date of requisition. If the Secretary fails to call the Special General Meeting within fourteen days of the required date, the members signing the requisition may themselves call the meeting and any resolution passed at such General Meeting will be binding on all members of the Association. Any resolution must be conducted by secret ballot in the event of a request by any one member. No business shall be transacted at a Special General Meeting other than that set out on the notice calling the Special General Meeting. Special General Meetings shall be called by notice posted to the last registered address of each financial member. Such notice shall be given at least fourteen days prior to such meeting. Six members shall constitute a Quorum at any General Meeting.

19. LEVIES

Levies may be imposed on members to augment the funds of the Association. No levy shall be imposed except by authority of a Special General Meeting and shall not exceed \$20.00 for each member in any year.

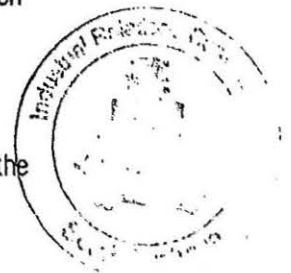
20. INSPECTION OF BOOKS

Any member having an interest in the funds of the Association shall be permitted to inspect the books and register of members of the Association at any reasonable time.

21. DUTIES OF OFFICERS

PRESIDENT

The President shall preside at all meetings at which he is present and shall have a casting vote only. He shall decide all questions of order, enforce due obedience to the rules and shall sign the Minutes of proceedings of all meetings of the Association.



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VICE PRESIDENT

A Vice President shall preside at meetings in the absence of the President and may exercise all the powers of the president.

SECRETARY

The Secretary shall attend all meetings and take notes of all proceedings. He shall collect all subscriptions, contributions, levies and fines, conduct all correspondence, take all necessary steps to carry out the directions of the Committee and of members in meetings assembled therefor and forward all returns required by law to the Industrial Registrar; keep register of members and produce all books, documents and accounts to the Auditors or Trustees when required. The Secretary shall be the officer to sue and be sued on behalf of the Association.

TREASURER

The Treasurer shall receive from the Secretary all moneys and bank same within three days. He shall be the custodian of the bank book and keep all necessary books of account and produce same at all meetings when called upon by the President so to do. He shall pay all accounts and hand over all books, documents and other property in his possession belonging to the Association when required by the President, the Trustees or on the decision of any meeting of the Association. The Treasurer may at his option direct the Secretary to perform all or any of the above functions.

22. STEWARDS

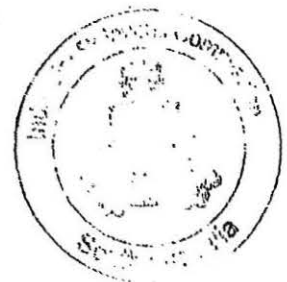
The Committee may appoint Stewards whose duty it shall be to collect all moneys due by members and issue receipts for same. The Stewards shall pay to the Secretary all monies so collected by them within fourteen days of collection. The Steward's books may be inspected by the Auditor at any time. The Stewards shall receive remuneration for their services, such amount as may from time to time be authorised by the Committee.

23. REMUNERATION OF OFFICERS

Members of the Committee, Auditors and Trustees shall be paid such remuneration for their services as may be determined by members at a General or Special General Meeting.

24. MISCONDUCT

If any member be accused of a breach of these rules or of a misconduct detrimental to the interests of the Association, he may be summoned to appear before the Committee. Such summons shall be in writing and contain a copy of the charge to be made against him and be served not later than seven days before the date he is called upon to answer the charge. The Committee shall have the power on the charge being satisfactorily proved to decide upon his expulsion from the Association or his suspension or to impose a fine not exceeding \$50.00 or any less punishment that the Committee may think fit. The member shall have the right of appeal to the next General Meeting.



RULES OF THE REGISTERED REAL ESTATE SALESPERSONS' ASSOCIATION OF S.A.
PAGE 7.

25. ALTERATION OF RULES

These rules may be amended or repealed or new rules be made by resolution passed at the Annual General Meeting or at a Special General Meeting called for the purpose. At least fourteen days notice, stating the nature of any proposed alteration, addition or amendment, shall be given to all financial members.

26. ILLEGAL STRIKE

Neither the Association nor any of its members shall at any time take part in an illegal strike, nor refrain from handling or dealing with any article or commodity, nor do any act or things to induce or compel any person to refrain from handling or dealing with any article or commodity.

27. DISSOLUTION

The Association may be dissolved by a resolution of the members of the Association present at a General Meeting convened for the purpose of considering such dissolution. The assets of the Association shall be given to an approved charitable organisation.

28. PROCEEDINGS BEFORE COURT

Any necessary proceedings before any court or Industrial Commission or other Tribunal shall be taken and conducted by the Secretary or by Counsel and/or Solicitor or Agent or such other person as the Committee may appoint for the purpose.

29. ADVERTISING

Members shall not use the letters R.R.E.S.A OF S.A. or R.E.S.A. OF S.A. whether written or verbal in any representation to the public.



IN THE FAIR WORK COMMISSION

IN THE MATTER OF: 4 yearly review of the Real Estate Industry Award 2010

Matter No.: AM2016/6

WITNESS STATEMENT OF MRS DANIELLE ANDREWS

I, Danielle Andrews, of 3 Hampden Avenue Marrickville in the state of New South Wales, Education and Training Manager, state and declare that:

1. I have been employed by the Real Estate Institute of NSW (the "REI") for about 20 months as Education and Training Manager. Prior to joining the REI, I was Group RTO Manager with Motor Trades Association of Western Australia.
2. I hold the following qualification(s) –
 Bachelor of Arts (majors in Human Resources/Industrial Relations, Political Economics and Gender Studies)
 Diploma of Frontline Management
 Diploma of Training and Assessment
 Certificate IV in Training and Assessment
3. In my position with REI I am responsible for the day to day operation and compliance of the registered training organisation (RTO). In addition I manage all the training delivery undertaken by REINSW along with all the events.
4. I have been made aware of the proceedings before the Fair Work Commission that make up matter number AM2016/6. In particular, I've considered and examined the amended application by the Registered Real Estate Salesperson's Association (RRESA) dated 16 May 2016 insofar as it seeks to vary the existing clause 14: **Minimum Weekly Wages** of the Real Estate Industry Award 2010 (the "Award").
5. The real estate industry is highly regulated at the State and Territory level. Each State and Territory has its own legislative conditions relating to the conduct of the profession including, relevantly, education and training. The table below details the licensing authority and principal statute applicable in each State and Territory.

State/Territory	Licensing Authority	Statute
NSW	Department of Fair Trading	Property, Stock & Business Agents Act 2002
VIC	Business Licensing Authority, Department of Justice	Estate Agents Act 1980
QLD	Office of Fair Trading	Property Agents & Motor Dealers Act 2000
S.A.	Office of Consumer and Business Affairs	Land Agents Act 1994
W.A.	Department of Commerce	Real Estate & Business Agents Act 1978

TAS	Auctioneers and Real Estate Agents Council	Property Agents and land Transactions Act (2005)
N.T.	Office of Business & Consumer Affairs	Agents Licensing Act 2002
A.C.T.	ACT Office of Fair Trading	Agents Act 2003

6. The legislative provisions in each jurisdiction require every real estate agency to be managed or under the effective control of a licensed agent.
7. Another tier of statutory control which exists in the real estate industry is the regulation of “real estate sales representatives” to be licensed or registered. Regulations provide that such employees must have completed minimum entry-level vocational qualifications to be employed in the industry. The entry level qualifications for sales representatives vary significantly across the States and Territories as can be seen from the table below.

	VIC	SA	WA	QLD	TAS	NT	NSW
Entry	3 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	17 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	7 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	7 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	Specialised course somewhat equivalent to 5 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	Certificate IV in Property Services (Real Estate) CPP40307	4 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307
License	Certificate IV in Property Services (Real Estate) CPP40307	Diploma of Property Services (Agency Management) CPP50307	Diploma of Property Services (Agency Management) CPP50307	19 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307	Diploma of Property Services (Agency Management) CPP50307	Diploma of Property Services (Agency Management) CPP50307	Certificate IV in Property Services (Real Estate) CPP40307

Note: The Diploma of Property Services (Agency Management) CPP50307 has the Certificate IV in Property Services (Real Estate) CPP40307 embedded inside it.


8. For a person to obtain a Certificate IV in Property Services (Real Estate) CPP40307, **24** units of competency are required (refer to attached training package qualification information specific to the Certificate IV in Property Services (Real Estate) CPP40307). It is key to observe that except in the Northern Territory entry requirements equate to a partial completion of the Certificate IV qualification in all instances.

This would indicate that for NSW, Queensland and Victoria who combined make up approximately 80% of the real estate industry in Australia, that real estate sales representatives are required to complete less than 30% of the Certificate IV in Property Services (Real Estate) CPP40307 as the entry level requirements.

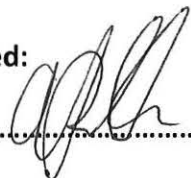
9. The details on the Australian qualifications framework and the interplay of qualifications and job roles and outcomes are set out in paragraphs 10 - 14 below.
10. The Australian Qualifications Framework (AQF) establishes the quality of Australian qualifications. The AQF represents the national policy for regulated qualifications in the Australian education and training system. It incorporates the quality assured qualifications from each education and training sector into a single comprehensive national qualifications framework.
11. Within Australia the AQF applies to all States and Territories and supports the national standards in education and training. The AQF provides the standard for each qualification ensuring consistency for qualification accreditation in all captured sectors.
12. The individual AQF levels and their alignment to qualifications within both the Vocational Education and Training (VET) sector and the tertiary sector:
 - Level 1 – Certificate I
 - Level 2 – Certificate II
 - Level 3 – Certificate III
 - Level 4 – Certificate IV
 - Level 5 – Diploma
 - Level 6 – Advanced Diploma, Associate Degree
 - Level 7 – Bachelor Degree
 - Level 8 – Bachelor Honours Degree, Graduate Certificate, Graduate Diploma
 - Level 9 – Master’s Degree
 - Level 10 – Doctoral Degree
13. In reference to the real estate industry and the registration and licensing outcomes for sales representatives, they are specifically related to AQF levels 4 and 5. When assigning an AQF level to a qualification, the goal is to focus on what the requirements of the tasks and role are in practice. AQF levels are also applied to the unit of competence as well. All VET qualifications are made up of a specified number of units of competence and those units of competence are assigned an AQF level. Then the collection of units of competence need to holistically form a qualification that produces an outcome against the qualifications designated AQF level.
14. The regulator in NSW, NSW Fair Trading, has defined that a sales representative is to obtain 4 units of competence from the Certificate IV in Property Services (Real Estate) CPP40307 to be granted a registration to practice under a licensee, while a licensee must obtain the full Certificate IV in Property Services (Real Estate) CPP40307 containing the units of competence as prescribed by NSW Fair Trading.
15. I have searched the National Register of VET (training.gov.au) for the Manufacturing Training Package MSM and the below table is a representation of the certificate levels:

Qualification title and level	Number of units of competence
MSM10216 Certificate I in Process Manufacturing	7
MSM20116 Certificate II in Process Manufacturing	14
MSM30116 Certificate III in Process Manufacturing	21
MSM40116 Certificate IV in Process Manufacturing	26
MSM50316 Diploma of Production Management	10

The units of competence for the qualifications above are aligned to the AQF level of that qualification.

SIGNED:  DATE: 28.9.16

Danielle Andrews

Witnessed:  DATE: 28.9.16

Signature of Witness

Alicia Pirvello

Name of Witness



Australian Government

Department of Education, Employment and Workplace Relations

CPP40307 Certificate IV in Property Services (Real Estate)

Release: 1

ISC INDUSTRY
SKILLS
COUNCILS
Creating Australia's Future

CPP40307 Certificate IV in Property Services (Real Estate)

Modification History

Not Applicable

Description

Not Applicable

Pathways Information

Not Applicable

Licensing/Regulatory Information

Not Applicable

Entry Requirements

Not Applicable

Employability Skills Summary

Employability Skills Qualification Summary	
Employability Skill	Industry/enterprise requirements for this qualification include the following facets:
Communication	<ul style="list-style-type: none"> • apply literacy skills to access and interpret a variety of texts, including leases; prepare general information and papers; prepare formal and informal letters, reports and applications; and complete prescribed forms • apply numeracy skills to calculate and interpret data such as deposits, entitlements and commissions • communicate with and relate to a range of people from diverse social, economic and cultural backgrounds and with varying physical and mental abilities • demonstrate effective communication strategies to establish rapport with clients, determine client needs, provide accurate advice, address client concerns and deal with conflict in line with agency practice • identify and assess property marketing strategies in the context of legislative requirements and agency practice • identify effective communication strategies for managing conflicts involving clients, and evaluate them in line with legislative requirements and agency practice • use verbal communication skills for face-to-face communication with real estate sellers and buyers
Teamwork	<ul style="list-style-type: none"> • identify roles and responsibilities of government agencies regulating the lease and management of property • identify roles and responsibilities of agents in leasing and managing property in line with legislative requirements and agency practice • work effectively in and promote communication between teams in an agency environment
Problem solving	<ul style="list-style-type: none"> • apply decision making and problem solving skills to analyse situations and make decisions consistent with legislative and regulatory requirements

Employability Skills Qualification Summary	
	<ul style="list-style-type: none"> • apply strategies for resolving disputes between landlords and tenants and evaluate them in line with legislative requirements and agency practice
Initiative and enterprise	<ul style="list-style-type: none"> • analyse causes and potential impact of risks on agency, clients and other stakeholders • apply analytical skills to interpret documentation, such as parliamentary documents, legislation, regulations and codes of conduct • apply research skills to identify and locate legislation, regulations and codes of conduct • apply negotiation and conflict resolution skills to resolve disputes with tenants and landlords • negotiate to assist clients with property sales and property management matters
Planning and organising	<ul style="list-style-type: none"> • apply risk management strategies associated with advising clients on property sales and property management options • identify and assess listing opportunities in the context of legislative requirements and agency practice • plan, organise and schedule work-related tasks, such as inspecting properties • identify changes to legislation and regulations affecting agency operations • identify information on key operations of estate agencies in the context of legislative and agency requirements • implement agency procedures and systems to minimise risk to agency • maintain relevant records of legislation and industry codes of conduct • identify and access source documents for legislation and regulations relevant to the provision of real estate agency services
Self-management	<ul style="list-style-type: none"> • demonstrate a commitment to comply with industry codes of conduct by own personal ethical behaviour • interpret and comply with legislative and agency requirements • understand legislative requirements and

Employability Skills Qualification Summary	
	<ul style="list-style-type: none"> verify with relevant people • manage competing work demands • model ethical practice • ensure personal presentation and professional image comply with industry and agency norms • organise own work • source specialist advice in line with agency practice
Learning	<ul style="list-style-type: none"> • apply knowledge of ethical and conduct standards and key principles of consumer protection, equal employment opportunity and privacy in relation to the leasing and management of property • apply knowledge of the process of leasing and managing property • assess personal knowledge and skills in providing real estate services against industry competency standards and other relevant benchmarks to determine continuing training needs and priorities • identify and plan opportunities for continuing training to maintain currency of competence and develop specialist and advanced skills and knowledge in line with agency practice
Technology	<ul style="list-style-type: none"> • access the internet and web pages • apply computing skills to access agency and resource databases • send and receive emails and complete standard forms and documents online • use standard software packages

Due to the high proportion of electives required by this qualification, the industry/enterprise requirements described above for each Employability Skill are representative of the property industry in general and may not reflect specific job roles. Learning and assessment strategies for this qualification should be based on the requirements of the units of competency for this qualification.

This table is a summary of Employability Skills that are typical of this qualification and should not be interpreted as definitive.

Packaging Rules

Packaging rules	
<p>To achieve recognition at the Certificate IV level, the candidate must demonstrate competency in the five core units, plus nineteen electives (total twenty-four units).</p> <p>At least ten elective units must be selected from property, sales and management, with the remaining elective units chosen from one or more of the following:</p> <ul style="list-style-type: none"> • property sales and management • specialist • common. <p>Up to two of the elective units may be chosen from:</p> <ul style="list-style-type: none"> • the Diploma of Property Services (Agency Management) • any Certificate IV qualification in CPP07 Property Services Training Package • any Certificate IV qualification in BSB07 Business Services or FNS04 Financial Services Training Package, provided that the units do not duplicate units in CPP07 Property Services Training Package. <p>All units must contribute to a valid, industry-supported vocational outcome.</p>	
Core units	
CPPDSM4007A	Identify legal and ethical requirements of property management to complete agency work
CPPDSM4008A	Identify legal and ethical requirements of property sales to complete agency work
CPPDSM4009B	Interpret legislation to complete agency work
CPPDSM4015B	Minimise agency and consumer risk
CPPDSM4080A	Work in the real estate industry
Elective units	
Property sales and management	
CPPDSM3008A	Maintain and protect condition of managed properties
CPPDSM4001A	Act as a buyer's agent
CPPDSM4002A	Apply knowledge of state or territory legislative and regulatory framework to complete agency work
CPPDSM4003A	Appraise property
CPPDSM4004A	Conduct auction

Packaging rules	
CPPDSM4005A	Establish and build client-agency relationships
CPPDSM4006A	Establish and manage agency trust accounts
CPPDSM4010A	Lease property
CPPDSM4011A	List property for lease
CPPDSM4012A	List property for sale
CPPDSM4013A	Market property for lease
CPPDSM4014A	Market property for sale
CPPDSM4016A	Monitor and manage lease or tenancy agreement
CPPDSM4017A	Negotiate effectively in property transactions
CPPDSM4018A	Prepare and present property reports
CPPDSM4019A	Prepare for auction and complete sale
CPPDSM4020A	Present at tribunals
CPPDSM4022A	Sell and finalise the sale of property by private treaty
CPPDSM4046A	Manage tenancy disputes
CPPDSM4049A	Implement maintenance plan for managed properties
Specialist	
CPPDSM3017A	Work in the strata/community management sector
CPPDSM4021A	Sell and finalise sale of rural property by private treaty
CPPDSM4023A	Act as a tenant's agent
CPPDSM4029A	Appraise business
CPPDSM4030A	Appraise rural property
CPPDSM4033A	Assess and value goods, chattels, plant and equipment
CPPDSM4034A	Assess and implement strata/community management agreement

Packaging rules	
CPPDSM4036A	Broker sale of industrial, commercial and retail property
CPPDSM4038A	Conduct goods, chattels or equipment clearing sale or auction
CPPDSM4040A	Contribute to life cycle maintenance strategy
CPPDSM4041A	Contribute to development of a tenancy mix strategy
CPPDSM4043A	Coordinate fit-out of property and facilities
CPPDSM4050A	Lease industrial, commercial and retail property
CPPDSM4051A	Lease rural property
CPPDSM4053A	List business for sale
CPPDSM4058A	Monitor service requirements in the property industry
CPPDSM4059A	Monitor space use in the property industry
CPPDSM4060A	Negotiate sale and manage sale to completion or settlement
CPPDSM4061A	Obtain prospects for listing
CPPDSM4062A	Occupy space
CPPDSM4069A	Promote and market listed business
CPPDSM4074A	Select and appoint contractors in the property industry
CPPDSM4078A	Sell rural property by tender
CPPDSM4079A	Work in the business broking sector
Common	
BSBCMM401A	Make a presentation
BSBHRM402A	Recruit, select and induct staff
BSBITS401A	Maintain business technology
BSBLED401A	Develop teams and individuals
BSBRKG304B	Maintain business records

Packaging rules	
BSBSMB404A	Undertake small business planning
BSBSMB406A	Manage small business finances
BSBWOR402A	Promote team effectiveness
CPPDSM4045A	Facilitate meetings in the property industry
CPPDSM4056A	Manage conflict and disputes in the property industry
CPPDSM4057A	Monitor a safe workplace in the property industry